



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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May 14, 2002

CERTIFIED RETURN RECEIPT
7099 3400 0016 8896 3847

Dan Powell
Emery Industrial Resources
P.O. Box 489
Price, Utah 84501

Re: Notice of Non-Compliance and Division Directive to Suspend Mining Activities,
Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

This letter is sent to formally notify you that your Cherry Hill Park Mine (M/049/021), is not in compliance with sections of the Utah Mined Land Reclamation Act 40-8-1 et seq (Act) and the Minerals Reclamation Program Rules, sections R647-1 through R647-5.

On July 20, 1992, the Division accepted a Notice of Intention to Commence Small Mining Operations for the Cherry Hill mine site. The Division's acceptance letter stated that you would need to file a Notice of Intention to Commence Large Mining Operations and receive Division Approval prior to expanding beyond five acres of surface disturbance.

On November 14, 1994, the Division received a Notice of Intention to Commence Large Mining Operations from Emery Industrial Resources. Several technical reviews have been performed since the initial filing and you have provided subsequent information to address the regulatory requirements. Unfortunately, the application remains technically deficient. Our September 30, 1999, review document outlined the remaining deficiencies. The large mine permit application cannot be approved until these requirements are adequately addressed.

On March 12, 2002, you met with the Associate Director of Mining and Division staff under a Division Directive to discuss the status of this operation and the remaining technical deficiencies. You agreed to provide the required information no later than March 22, 2002. We have received no information or request for an extension to date.

Location of Non-Compliance

The Cherry Hill Park Mine is located in the East ½ of the Northwest ¼ of the Northwest ¼ of Section 36, Township 11 South, Range 8 East, SLBM, Utah County, Utah.

Finding of Non-Compliance

1. The Division used a GPS surveying instrument to measure the disturbance associated with the Cherry Hill project area. The survey indicated that this operation has affected approximately 20.6 acres. The Cherry Hill Park Mine has exceeded five acres of surface disturbance, before receiving Division approval of a large mining permit application, as required by Title 40-8-13 of the Mined Land Reclamation Act and Minerals Rule R647-3-113.
2. Emery Industrial Resources, has not posted a form and amount of reclamation surety acceptable to the Division as required under section 40-8-14 of the Act and Rule R647-4-113, before expanding operations beyond the five acre threshold for a small mine.
3. Emery Industrial Resources exceeded five acres of surface disturbance after being formally advised that it is a violation of the Act and Rules to do so without receiving prior Division approval of a large mining permit. The operator may have intentionally evaded the Mined Land Reclamation Act and Minerals Rules in a willful and knowing manner. The operator's actions may be subject to the penalty provisions of section 40-8-9 of the Act.
4. Emery Industrial Resources has failed to provide sufficient technical information to satisfy the regulatory requirements to allow the Division to grant approval of the large mine permit application in a timely manner.

Mitigation Requirements

1. Emery Industrial Resources ***must submit an acceptable reclamation surety*** to the Division in the amount of \$43,500.00 within thirty (30) days of your receipt of this Notice of Non-Compliance. This surety amount is based upon information provided in your large mine permit application and the current disturbance. A draft reclamation cost estimate is attached. This reclamation surety amount may eventually be increased or decreased to reflect third party reclamation costs when your large mine permit application is finalized and approved. Please contact Joelle Burns at (801) 538-5291 to obtain copies of the appropriate bonding forms.


2. Emery Industrial Resources is hereby directed to ***immediately suspend all mining operations and removal of material*** from the Cherry Hill Park Mine until the reclamation surety is received and formally accepted in writing by the Division.
3. Within ten (10) days of your receipt of this Notice, Emery Industrial Resources must provide a written response which addresses the remaining technical deficiencies as outlined in the Division's September 22, 1999 review letter.

Consequences of Continued Non-Compliance

1. Emery Industrial Resources' failure to comply with these mitigation requirements within the time frames specified in this Notice will result in the issuance of a formal Notice of Agency Action. The Notice of Agency Action may require the operator to appear at a formal hearing before the Board of Oil, Gas and Mining. Following public notice and Hearing, the Board will issue an abatement or compliance Order which may require: suspension or termination of all mining operations, immediate reclamation of all mining-related disturbances, and/or other lawful requirements as authorized under the Act.

If you wish to appeal this Notice and Directive, you may contact the Division to schedule an informal hearing before the Division Director. Please contact Vickie Southwick, Executive Secretary, at (801) 538-5304, within 10 days of your receipt of this notice, if you choose to arrange an informal hearing. If you have any questions regarding this Notice you may contact me at (801) 538-5306, Wayne Hedberg at (801) 538-5286, or Lynn Kunzler (801) 538-5310.

Sincerely,


for Mary Ann Wright,
Associate Director, Mining

jb

Attachments: draft reclamation cost estimate
Permit chronology

cc: Buck Rose, Utah County

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Supplemental Information – Notice of Non-Compliance

Emery Industrial Resources
Cherry Hill Park Mine
M/049/021

Permit Chronology (Updated 5-14-2002)

July 8, 1992	Received SMO for Project from operator.
July 20, 1992	Division accepted SMO for Project – no variances.
July 22, 1993	Site inspected, area estimated to be just less than 5 acres.
July 7, 1994	Letter from Division to Dan Powell – asked about status of LMO application for this project – Questioned intention of plans to go to a large mining operation.
July 27, 1994	Site inspection found disturbed area greater than 5 acres (operator had estimated 7 acres, and has posted a reclamation surety with Utah County for 9 acres of disturbance).
August 24, 1994	Letter to operator requiring submittal of LMO within 45 days.
October 7, 1994	Operator provided copy of bonding documents that have been filed with Utah County (9 acres bonded at \$1,600 per acre, total bond is \$14,400.00). Operator also requested an additional 30 days to submit LMO.
October 14, 1994	Division granted 30-day extension.
November 14, 1994	Division received original LMO from the operator.
January 31, 1995	Annual report submitted – identified approximately 8 acres of disturbance.
June 2, 1995	Division sends deficiency review comments of LMO to Emery Industrial.
February 23, 1996	Annual report submitted – identified approximately 12 acres of disturbance.
October 27, 1997	Letter sent to Emery Industrial requested operator to respond within 45 days of the June 2, 1995 review, which is now over two years old.
December 4, 1997	Operator requested an additional 90 days to complete response to the Division's deficiency review, stating that he would need outside help to complete land surveys, soil surveys, etc.
January 12, 1998	Operator's request for an additional 90 days is denied, operator given until February 27, 1998 to submit formal response to the Division's review. A timetable was to be submitted which outlined when information that was not available would be submitted.
February 5, 1998	Annual report submitted – approximately 13 acres disturbed.
February 27, 1998	Received fax from operator (re: response for completion of permitting), which stated that he would reclaim a portion of the site, and a certified copy and an updated map would follow.
December 9, 1998	Division sent letter to Emery Industrial requesting a formal submission of all permitting materials collected to date. The Division never received the certified copy or map. Letter stated that if sufficient acreage had not been reclaimed to reduce the disturbed area to less than five acres, then a complete LMO must be filed with the Division by January 31, 1999.
January 29, 1999	Annual report submitted – approximately 5 acres reclaimed (this would leave 8 acres based on 1998 annual report).
March 3, 1999	Operator submits revised LMO.

September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation and 0.9 acres that will remain). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and that reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 30, 2001	Meeting held to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting date or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September ?, 2001	Phone call requesting another two week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail. (He lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. No activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went

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April 3, 2002	over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002. Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, need couple more weeks to provide the formal submittal.
May 14, 2002	Notice of Non-compliance and Division Directive sent to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies.

RECLAMATION SURETY ESTIMATE					
Emery Industrial Resources, Inc			last revision		
Cherry Hill Park Mine			04/23/02		
M/049/021			filename M049-021 WB2		
Prepared by Utah State Division of Oil, Gas & Mining			Utah County		
-Access road, building, loading ramp, facilities not included in this estimate (0.85 acres) -1.5 acres of the site will not receive topsoil -4.2 acres has been regraded (not seeded) -A depth of 6 inches of growth medium to be placed over entire site, because of insufficient amounts of soil, amended reject fines will also be used to complete reclamation.					
Note: actual unit costs may vary according to site conditions					last unit cost update
					2-Aug-00
-Amount of disturbed area which will receive reclamation treatments =				19.75 acres	
-Estimated total disturbed area for this mine =				20.6 acres	
Activity	Quantity	Units	\$/unit	\$	Note
Safety gates, signs, etc. (mtls & installation)	1	sum	200	200	(1)
Regrading disturbed areas (1 ft depth)	15 55	acre	502	7806	(7)
Ripping pit floors, stockpiles & compacted areas	19 75	acre	234	4622	(9)
Highwalls reduction (1800' X 10' @ 3 1))	3000	CY	0 5	1500	
Topsoil replacement - dozer	4900	CY	0 5	2450	(12)
Growth medium replacement - dozer	9800	CY	0 5	4900	(13)
Composted manure (5 ton/acre)	6	acre	150	900	(00)
Composted manure (10 ton/acre)	13 75	acre	300	4125	(00)
Broadcast seeding	19 75	acre	225	4444	(00)
General site cleanup & trash removal	10	acre	50	500	(00)
Equipment mobilization	1	equip	1000	1000	(00)
Reclamation supervision	5	days	386	1930	(15)
	Subtotal			34376	
10% Contingency				3438	
	Subtotal			37814	
Escalate for 5 years at 2 82% per year				5641	
	Total			43455	
Rounded surety amount in year 2007 \$				43500	
Average cost per disturber acre =				2109	
Note					
(1)	DOGM lump sum assumed				
(7)	Means 2000 & Blue Book 3Q/00 Cat D8N, U, mtl 2550 lb/CY, 50 ft push, 1 ft depth				
(9)	Means 2000 & Blue Book 3Q/00 Cat D8N, U, multi shank rippers, speed 1 0 mph				
(12)	Means 2000 & Blue Book 3Q/00 Cat D8N, U, mtl 2550 lb/CY, 100 ft push				
(13)	Means 2000 & Blue Book 3Q/00 Cat 627F P-P, mtl 2550 lb/CY, 2,000 ft haul one-way, grade +/- 4%.				
(00)	DOGM general estimate - manure \$16/ton delivered, \$14 ton/acre spreading				
(00)	DOGM general estimate - broadcast seeding				
(00)	DOGM general estimate - site cleanup & trash removal				
(00)	DOGM general estimate - equipment mobilization				
(15)	Means 2000, 01300-700-0180, project manager, minimum \$1,930/wk				